

Protecting and Preserving Wealth in Today's Litigious Society*

By James P. Weller

James P. Weller describes four asset protection techniques including: family limited liability company, offshore trust, domestic wealth protection trust, and flexible spendthrift trust.

Introduction

It is estimated that 90 percent of the lawsuits in the world are filed in the United States. With a percentage that high, it is doubtful that few, if any, people living in the United States would dispute the statement that "we live in a very litigious society." Consequently, as wealth is accumulated, more and more Americans are making wealth protection a top priority.

Both business wealth and personal wealth can be subject to attack by potential creditors. Fortunately, most businesses are structured in a manner that limits an owner's liability for business debts to his or her investment in the business. If the business entity is truly separate from the owner, a business creditor should not be able to reach the personal wealth of the owner.

Personal liability, which will be the focal point of this article, is another matter. In that regard, the first line of defense is typically liability insurance. However, resting solely on liability insurance for protection can be a huge mistake because it is often hard to predict how much coverage will be needed. In addition, liability insurance policies have limits and exclusions. Consequently, the prudent approach is to examine other planning solutions to fill in any possible protection gaps that might exist with liability insurance coverage.

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This article will discuss the pros and cons of four wealth protection planning solutions that go beyond liability insurance:

1. Family Limited Liability Company (FLLC)
2. Offshore Trust
3. Domestic Wealth Protection Trust
4. Flexible Spendthrift Trust

Although there are no 100-percent bulletproof solutions for protecting wealth, these four solutions strive to achieve two central goals. First, they provide a structure for your client's wealth that will hopefully discourage lawsuits. Second, they help to create the possibility for a more favorable settlement should a lawsuit be filed. It should be noted that a detailed discussion of the Bankruptcy Abuse Prevention and Consumer Protection Act is beyond the scope of this article. However, where pertinent, specific aspects of the Act will be pointed out. Also, this article will not focus on creditor exemptions granted under state law.

Avoiding Fraudulent Transfers

One of the major hurdles to effective wealth protection planning is overcoming the Uniform Fraudulent Transfer Act (UFTA). This Act has been adopted by the majority of states in one form or another.

The UFTA is one of the key weapons that a creditor has to crack the shell of a wealth protection plan. If a creditor is successful in attacking a transfer as fraudulent, a court can void the transfer. A fraudulent transfer is one *for less than reasonably equivalent value* in which the transferor has the intent to delay, hinder or defraud creditors.

In *Townley*, the debtors actually admitted their intent to delay, hinder, or defraud future unknown creditors.¹ In the absence of such a rare admission, the UFTA lays out several “badges of fraud” that can be used to establish an intent to delay, hinder, or defraud creditors. For example, the Texas Fraudulent Transfer Act lists the following factors to consider in determining the existence of this wrongful intent:

- Transfer or obligation was to an insider.
- Debtor retained post-transfer control or possession of the property transferred.
- The transfer or obligation was concealed.
- Before the transfer was made or the obligation was incurred, the debtor had been sued or was threatened by a suit.
- The transfer was of substantially all the debtor's assets.
- The debtor absconded.
- The debtor removed or concealed assets.
- The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.
- The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.
- The transfer occurred shortly before or shortly after a substantial debt was incurred.
- The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.²

The courts look at the above “badges of fraud” in the context of the particular facts and circumstances of each case. No one factor is determinative of an intent to delay, hinder or defraud creditors.

Even though a creditor need not exist at the time of the transfer to prove a fraudulent transfer under UFTA, the best course of action is still to embark on the journey of wealth protection planning long before there are any pending, threatened or actual lawsuits. In other words, wealth protection planning in its purest form involves unforeseen future creditors, and it is best if done in conjunction with other planning initiatives such as overall wealth planning and tax planning.

Family Limited Liability Company (FLLC)

An FLLC is generally taxed as a limited partnership. Like a limited partnership, an FLLC can provide two

main benefits in protecting and preserving wealth. First, transfers of interests in an FLLC can save gift and estate taxes due to valuation discounts. Valuation discounts are generally based on lack of marketability and lack of control due to a minority interest. In spite of the IRS' recent success in attacking estate tax discounts under Internal Revenue Code Section (“Code Sec.”) 2036(a)(1), an FLLC that is properly established under state law, properly operated as a separate entity and created for significant and legitimate nontax reasons should have a strong foundation to withstand such attacks.

Second, once nonfraudulent transfers of wealth have been made to an FLLC, the rights of future creditors of the transferor are typically restricted under state law. One such restriction is the charging order remedy. A charging order only entitles a judgment creditor to distributions that are actually made from the FLLC. Essentially, a charging order can create a waiting game between the debtor and the creditor. This waiting game can often lead to a more favorable settlement for a debtor.

It is not uncommon for the debtor to be the managing member of the FLLC, and consequently be in control of distributions. However, such retention of distribution control can be problematic from an estate tax standpoint in light of Judge Cohen's application of Code Sec. 2036(a)(2) in *A. Strangi Est. (Strangi III)*.³ Due to the control over the wealth transferred to the family limited partnership that Judge Cohen deemed Mr. Strangi to have retained, that wealth was included in his gross estate at its full date of death value. Since Code Sec. 2036(a)(2) was not addressed by the Fifth Circuit in the appeal of *Strangi III*, the prudent course may be to have powers attributable to a general partner of a limited partnership or a managing member of an FLLC, such as distribution control, rest in the hands of an independent third party.⁴

Oklahoma law provides that the sole remedy of a judgment creditor against the wealth in an FLLC is a charging order.⁵ This can be a powerful deterrent for a judgment creditor. However, some states provide for other remedies in addition to the charging order. One such remedy is foreclosure.

When a judgment creditor has a charging order and a court orders foreclosure, the action is not against the FLLC itself or the assets inside the FLLC. Rather, it is against the debtor's FLLC interest. The foreclosure of a charging order becomes a permanent attachment of the debtor's rights to receive distributions from the FLLC. Once attached, the creditor can try to sell the

interest. Realistically, other than the FLLC and the nondebtor members of the FLLC, there is little or no market for the debtor's foreclosed interest.

Some planners believe that the charging order provides an additional stumbling block for a judgment creditor because the income attributable to the charged interest will be taxed to the judgment creditor whether or not distributions are made. This position is based on Rev. Rul. 77-137, 1977-1 CB 178. However, this author does not believe that Rev. Rul. 77-137 is a basis for imputing the income attributable to the debtor's interest to a judgment creditor with a charging order. Rev. Rul. 77-137 involved the voluntary transfer of a partnership interest. There is nothing voluntary about a charging order. Granted, the argument for attributing the debtor's income tax consequences to the judgment creditor would be much stronger with a foreclosure. Due to the permanency of foreclosure, there should be little doubt that the judgment creditor would be saddled with the income tax attributes of the debtor's interest.

Second, there is concern that the restrictive nature of the charging order remedy has been negated in certain bankruptcy situations by *Moritz v. Fiesta Investments, LLC (In re Ehmann I)*.⁶ In that case, the bankruptcy court held that a bankruptcy trustee could be a full-fledged member of an LLC where the debtor's LLC interest was deemed to be passive (non-executory) even though the charging order is the sole remedy in Arizona. Many planners have trepidations about this decision and its potential negative impact on charging orders in spite of the fact that the decision was eventually withdrawn due to settlement. Third, in light of *In re Ashley Albright*, there is uncertainty as to whether the charging order remedy is available in a single member LLC.⁷ In that case, the bankruptcy court stated that the purpose of the charging order is to protect non-debtor members of the LLC from having an unwanted party such as a creditor become a member. Without other members in the LLC, the court felt that the rationale behind a charging order becomes moot.

Finally, like the FLLC, the charging order remedy also applies to the family limited partnership (FLP).

However, due to the unlimited personal liability of a general partner for the debts of the limited partnership, an additional entity like an LLC is often formed to act as general partner.

Offshore Trust

The main wealth protection thrust behind the Offshore Trust is to create barriers and obstacles for creditors in their efforts to enforce their judgments. By establishing a trust in a debtor-friendly foreign jurisdiction, a U.S. judgment creditor's enforcement task is greatly complicated. He or she will have to give up home field advantage and play the debt collection game under a different set of rules.

Structurally, an Offshore Trust involves the creation of a self-settled irrevocable spendthrift trust in a foreign jurisdiction with a foreign trustee. To help to pacify the settlor's concerns due to the extent of control relinquished to the foreign trustee, a trust protector is frequently named. A trust protector is an independent third party who often is a foreign person who has certain "checks and balances" over the foreign trustee. These "checks and balances" can include the power to veto investment decisions and fire the foreign trustee.

Proponents of Offshore Trusts espouse several key benefits. First, many foreign jurisdictions have laws that are more favorable to debtors than the laws in the United States. For instance, many of these jurisdictions have a shorter statute of limitations for bringing a claim and a higher burden of proof for a fraudulent transfer. Second, the trust can have a "flight clause" that permits the trustee to move the trust to another jurisdiction should there be a threat to the wealth in the trust. Finally, what guarantee does a judgment creditor have that his or her U.S. judgment will be recognized by the foreign court? Frankly, there is none, and the judgment creditor may have to start his or her claim all over again in the foreign jurisdiction.

The above picture looks very rosy. Yet, there is another side to Offshore Trusts that should be disclosed to clients before they engage in Offshore Trust planning. Some aspects of this other side include the following:

The UFTA is one of the key weapons that a creditor has to crack the shell of a wealth protection plan. If a creditor is successful in attacking a transfer as fraudulent, a court can void the transfer.

- **Reporting Requirements.** There are numerous reporting requirements for an Offshore Trust. One example is Form 3520-A. A foreign trust must file Form 3520-A with the IRS annually if the Offshore Trust has at least one U.S. owner under the grantor trust rules in Code Secs. 671-679. Form 3520-A contains balance sheet and income statement information on the trust. Since an Offshore Trust typically has at least one U.S. beneficiary, the grantor trust rules are most commonly triggered under Code Sec. 679(a)(1) unless exceptions apply. However, it should be noted that having the settlor deemed the owner of the Offshore Trust for income tax purposes does have some key advantages. Among them are: (1) the ability of the settlor to transact with the grantor trust income tax-free due to Rev. Rul. 85-13, 1985-1 CB 184, (2) the trust can grow without being impeded by the payment of income tax, (3) the payment of income tax by the settlor is not a gift as a result of Rev. Rul. 2004-64, IRB 2004-27, and (4) the settlor's gross estate is reduced by the payment of the income tax on trust income.
- **Tax Neutrality.** Despite what some promoters are saying, an Offshore Trust standing on its own merits does not save taxes.
- **Triggering Gain.** As mentioned above, Code Sec. 679(a)(1) usually results in grantor trust status for the settlor of an Offshore Trust. Due to Code Sec. 684(b), the funding of Offshore Trusts treated as grantor trusts with appreciated wealth does not trigger gain. However, loss of grantor trust status for example at the death of the settlor can trigger gain under Code Sec. 684(a)(1) and (2) to the extent of the fair market value of the wealth transferred to the Offshore Trust over the settlor's adjusted tax cost basis.
- **Relinquishment of Control.** This is a hard pill to swallow. Wealth is being placed with a trustee in a foreign jurisdiction. As a result, there may be a natural tendency to want to retain some powers or strings over the wealth. Retaining such powers or strings should be done with caution because it may end up constituting the power to repatriate the wealth in the eyes of the U.S. Courts.
- **Personal Jurisdiction remains with the U.S. Courts.** Even though significant wealth has been moved to a jurisdiction that makes it much harder for a creditor to reach, creditors retain the very powerful tool of jurisdiction over the person if the debtor remains in the United States. In that

regard, failure to pursue all reasonable avenues to comply with a court's order to repatriate wealth in an Offshore Trust has led to findings of contempt and incarceration in certain instances.⁸ Coupled with that, many believe that the impossibility to perform defense has lost its luster with the U. S. Courts particularly when it is self-imposed.

The bottom line with Offshore Trusts is that they make it more difficult for creditors to reach wealth. However, they are only one tool in the wealth planning arsenal, and they are not for everyone. Planning with Offshore Trusts must be done with eyes wide open. Arguably, they are most effective if done in conjunction with other planning such as estate planning, and in situations in which powers over the transferred wealth have not been retained. In addition, you must always be mindful that remaining in the United States subjects you to the personal jurisdiction of its court system.

Domestic Wealth Protection Trust

Domestic Wealth Protection Trusts have often been referred to as the U.S. version of the Offshore Trust. Prior to 1997, offshore jurisdictions were the only place that truly offered wealth protection for self-settled spendthrift trusts. However, when Alaska adopted its Domestic Wealth Protection Trust Act on April 2, 1997, the ability of a settlor to establish an irrevocable spendthrift trust for his or her benefit was brought onshore.⁹ Delaware, Nevada, Utah, Rhode Island, and South Dakota have followed suit by enacting similar legislation for self-settled spendthrift trusts.¹⁰

Although they are alike in many instances, these statutes have some key differences. For instance, creditors whose claims arise after the transfer of wealth to a Domestic Wealth Protection Trust in Alaska have four (4) years to bring a claim in order for that claim to be recognized under Alaska Law.¹¹ Nevada has a shorter window of two (2) years.¹² While each state allows the settlor to be a discretionary beneficiary, Delaware permits the settlor to retain the right to current income from the trust.¹³

It is generally believed that the Domestic Wealth Protection Trusts discussed above are best suited for residents of those states. Consequently, some planners have concerns with Domestic Wealth Protection Trusts that are created by non-residents. Among the key concerns are the following:

- **Does “full faith and credit” apply to judgments obtained in the debtor’s state of residency?** For example, suppose that an Oklahoma resident established a Domestic Wealth Protection Trust in Nevada, and thereafter he or she was sued in Oklahoma state court. If a judgment is obtained in Oklahoma, must the courts in Nevada give full recognition to that judgment? Although this issue has not been decided, the debtor’s position would be greatly enhanced if the trust and the trustee had no contacts with Oklahoma that would constitute jurisdiction over the wealth in the trust. The uncertainty surrounding the “full faith and credit” issue is further compounded if a creditor obtains a judgment in federal court.
- **Does the transfer of wealth to the trust constitute a fraudulent transfer?** Like other wealth protection planning vehicles, a Domestic Wealth Protection Trust must avoid being deemed a fraudulent transfer. In a bankruptcy setting, this becomes a more formidable task since a creditor has ten (10) years after the filing of the bankruptcy petition to challenge a transfer to a Domestic Wealth Protection Trust as being fraudulent.¹⁴ However, if the transfer is done in compliance with the Uniform Fraudulent Transfer Act, this ten (10) year window arguably should not be a problem.
- **Which spendthrift law applies?** Does the law of the debtor’s state of residency which does not recognize Domestic Wealth Protection Trusts apply, or does the law of the state that authorizes a Domestic Wealth Protection Trust apply?
- **Will it matter how the Domestic Wealth Protection Trust is administered?** The independence of the trustee is very important. If the trustee is compliant with virtually all of the settlor’s requests for distributions, a creditor has an excellent argument to gain access to the wealth in the trust.

Besides the above statutes, it should be mentioned that Oklahoma, Missouri, and Colorado have domestic wealth protection trust laws. Oklahoma entered the realm of domestic wealth protection planning on June 9, 2004 by enacting the Family Wealth Preservation Trust Act.¹⁵ This Act was amended and enhanced on June 5, 2005. However, the wealth protection afforded under this Act does not stack up favorably against that provided in Alaska, Nevada, Utah, South Dakota, Rhode Island, and Delaware for three main reasons.

First, under the Oklahoma Act, permissible beneficiaries can only be the settlor’s spouse, lineal

descendants and lineal ancestors of the settlor and the settlor’s spouse, adopted lineal descendants of the settlor or the settlor’s spouse if they are under 18 at the time of adoption, and Code Sec. 501(c)(3) nonprofit charitable organizations. The settlor is specifically omitted as a permissible beneficiary. Second, the maximum amount of wealth that can be placed into a Family Wealth Preservation Trust is \$1 Million. Finally, more than 50 percent of the wealth in the trust must consist of Oklahoma assets. Oklahoma assets include assets like stocks and bonds issued by companies that have their principal place of business in Oklahoma and real estate with a situs in Oklahoma. The one unique feature of the Oklahoma Wealth Preservation Trust is the fact that the trust can be revocable or irrevocable. All of the aforementioned six (6) states require that the trust be irrevocable. In essence, making the trust revocable allows the settlor to be an indirect beneficiary even though the statute does not directly permit it. Also, a revocable trust is gift tax and income tax-free.

Missouri has had a domestic wealth protection trust law since 1989.¹⁶ This law provides settlors with protection from future creditors except under the following circumstances: (1) the settlor is the sole beneficiary of the income or other property in the trust, (2) the settlor retains the right to revoke the trust, (3) the settlor retains the right to amend the trust, and (4) the settlor is one of a class of beneficiaries and has a right to retain a specific portion of the income or other trust property that is determinable solely from the provisions of the trust document. On July 9, 2004, Missouri passed legislation that essentially upholds the creditor protection granted under the 1989 law while rejecting a prior bankruptcy court decision disallowing such protection.¹⁷ This statute took effect on January 1, 2005, and it applies to trusts created before, on, or after that date.

Colorado Revised Statutes Section 38-10-111 provides wealth protection to settlors as follows: “All deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels, or things in action, or real property, made in trust for use of the person making the same shall be void against the creditors *existing* of such person.” This statute has been addressed by the courts.¹⁸ Much of the focus by the courts has been on whether or not the creditors existed at the time of the transfer to the trust.

What is the bottom line with Domestic Wealth Protection Trusts in light of the fact that they are untested by the courts and surrounded by a degree of

uncertainty? The fact that Domestic Wealth Protection Trusts have not been tested by the courts is not necessarily a bad thing because these statutes are relatively new. Also, it may signal the fact that they are accomplishing the goal of deterring lawsuits. As previously mentioned, a Domestic Wealth Protection Trust will probably work most effectively if the settlor is a resident of the state with the domestic wealth protection statute. It also stands to reason that having all of the trust assets in the Domestic Wealth Protection State would help to solidify the protection. Likewise, caution should be exercised in naming a trustee. If a trustee is doing business in other states including the debtor's state of residency, the courts of the debtor's state of residency would have a valid claim of jurisdiction over the trust. Once again, clients deserve to be fully informed of the current status of the Domestic Wealth Protection Trust before making them part of their wealth protection plan.

Flexible Spendthrift Trust

A Flexible Spendthrift Trust is an irrevocable trust that is created for the benefit of family members such as children and grandchildren. It can be created during lifetime or at death.

One of the primary goals of a Flexible Spendthrift Trust is to protect the wealth in the trust from the future creditors of the beneficiaries including divorcing spouses. There are two mainstays of a Flexible Spendthrift Trust. First, a spendthrift clause which prohibits the beneficiaries from voluntarily or involuntarily alienating or assigning their interests in the trust must be part of the trust document. This spendthrift clause not only restricts the rights of the beneficiaries, but it builds a shield around the wealth in the trust that helps to keep future creditors and divorcing spouses from gaining access. Second, distributions of income and principal should be in the complete discretion of the trustee. Giving beneficiaries any distribution authority under the trust should be avoided. Rather, full discretion for the distribution of income and principal should rest with an independent third party trustee.

The Flexible Spendthrift Trust is an example of a planning solution that can generate benefits beyond wealth protection planning. Some of these benefits include the following:

- **Tax-Free Compounding.** A \$1 Million gift to a Flexible Spendthrift Trust can be completely offset by the \$1 Million Gift Tax Exclusion. Application of the Generation Skipping Transfer (GST)

Tax Exemption to that amount will eliminate any current or future GST Tax consequences for the trust. As a result, the \$1 Million gift can grow and compound free of transfer taxes during the entire term of the trust. The impact of the transfer tax-free compounding can be further enhanced by establishing the Flexible Spendthrift Trust in a state that has abolished the Rule against Perpetuities. In addition, triggering grantor trust status will allow the trust to grow and compound income tax-free.

- **Income Tax-Free Use of Trust Assets.** A beneficiary can be given the ability to use rent-free the individual assets that make up the overall wealth in the trust. The IRS might argue that the rent-free use of a trust asset results in imputed income to the beneficiary to the extent of the fair market rental of the trust asset. Much to the IRS' chagrin, the federal courts have consistently held that the rent-free use of trust assets does not result in income to the beneficiaries.¹⁹ The end result is that the beneficiary has access to and use of trust assets income tax-free, yet the trust assets are inside the Flexible Spendthrift Trust beyond the reach of the future creditors and divorcing spouses of the beneficiaries.
- **Ability to Change Beneficiaries.** Although the Flexible Spendthrift Trust is an irrevocable trust, the ability to change beneficiaries can be maintained by granting a beneficiary a testamentary limited power of appointment.
- **Ability of Beneficiaries to Serve as Trustee.** As mentioned earlier, situations in which a beneficiary can control distributions should be avoided. However, there is no reason why a beneficiary cannot act as trustee or co-trustee as to certain decisions such as the investment management of the wealth in the trust.
- **Opportunity Shifting and Participation.** The wealth inside the Flexible Spendthrift Trust can be used to provide seed money to start a business for a beneficiary. The initial value of the investment and any subsequent appreciation stay inside the wealth protected trust that can be structured to be free of transfer taxes and income tax. In addition, the wealth in the trust can be used to participate with other family members in a business venture such as a limited liability company or limited partnership. As noted above, such an investment in a business venture would be inside of the Flexible Spendthrift Trust where it can escape transfer

taxes and income tax while being protected from the future creditors and divorcing spouses of the beneficiaries. As an additional planning note, there is always a concern about the unlimited personal liability that is associated with the general partnership interest of a limited partnership. The Flexible Spendthrift Trust may be a way to alleviate this concern. By housing the general partnership inside of the Flexible Spendthrift Trust at formation of the limited partnership, the wealth protection provided by the trust should extend to the general partnership interest.

Naturally, there are potential drawbacks with a Flexible Benefits Trust, and three are worth discussing. First, distributions from the trust lose their protection. Once wealth is outside of the trust, it becomes fair game for creditors.

Second, there are exceptions under state law to the protection that comes with a spendthrift trust. For instance, the State of Oklahoma provides that all income due or to accrue to the beneficiary of a spendthrift trust can be reached to satisfy the following claims: (1) support of a husband, wife, or child of the beneficiary, (2) necessary services rendered or necessary supplies furnished to the beneficiary, or (3) a judgment on any such claim under (1) and

(2) above.²⁰ Consequently, for the best protection of trust wealth as previously suggested, the distribution provisions should be purely discretionary in the hands of a third party independent trustee to avoid the beneficiaries having a property right.

Finally, several states have adopted the Uniform Trust Code (UTC). There is some consternation in the planning community about the negative impact of the UTC on discretionary spendthrift trusts. This is because the UTC places a good faith standard on all trusts including discretionary spendthrift trusts.²¹ The fear is that the good faith standard creates a property right that can be enforced by the beneficiary which in turn can be reached by certain creditors.

Conclusion

The reality in today's world is that wealth protection planning has become essential. The four solutions discussed in this article are simply some of the many ways that wealth can be structured to provide protection from future creditors. As advisors, our role is to help our clients see and solve their wealth protection issues. This entails identifying and implementing the right pieces to solve the specific wealth protection planning puzzle of each client.

ENDNOTES

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¹ *U.S. v. Townley*, 9th Cir., No. 04-35767 (May 2006).

² Texas Business & Commerce Code Chapter 24.005(b).

³ *A. Strangi Est.*, 83 TCM 1331, Dec. 55,160(M), TC Memo. 2003-145.

⁴ *A. Strangi Est.*, CA-5, 2005-2 USTC ¶60,506 (July 15, 2005).

⁵ Oklahoma Statutes Title 18 §2034.

⁶ 2005 WL 78921 (Bankruptcy D. Arizona) (Jan. 2005).

⁷ No. 01-11367 (Bankruptcy D. Colorado) (Apr. 2003).

⁸ *FTC v. Affordable Media LLC*, 179 F3d 1228 (9th Cir. 1999); *In re Lawrence*, 238 BR 498

(Bankruptcy S.D. Florida, 1999).

⁹ Alaska Statutes §34.40.110.

¹⁰ Delaware Code Annotated Title 12, §§3570–3576, Rhode Island General Laws §18-9.2-1-18-9.2-7, Nevada

Revised Statutes §§166.010–166.170, Utah Code Annotated §25-6-14, and South Dakota S.B. 93 (2005).

¹¹ Alaska Statutes §34.40.110(d).

¹² Nevada Revised Statutes §166.170.

¹³ Delaware Code Annotated Title 12, §3570(10)(b)(3).

¹⁴ Act Sec. 548(e)(1) of the Bankruptcy Abuse Prevention & Consumer Protection Act of 2005.

¹⁵ Oklahoma Statutes Title 31 §10-18.

¹⁶ Missouri Revised Statutes §456.080.3.

¹⁷ Missouri Revised Statutes §456.5-505.3.

¹⁸ *Campbell v. Colorado C&I Company*, 9 Colorado 60, 10 P. 248 (Colorado 1885); *Fulton Investment Company v. Smith*, 27 Colorado Appellate 279, 149 P. 444 (1915), *aff'd*, 64 Colorado 33, 170 P. 1183 (Colorado 1918); *In re Baum*, 22 F3d 1014 (10th Cir. 1994).

¹⁹ *M.B. Sparrow*, 18 BTA 1, Dec. 5601 (1929); *J.H. Hillman, Jr.*, 71 F2d 688 (3d Cir. 1934), *H.B. Plant*, CA-2, 35-1 USTC ¶9172, 76 F2d 8; and *A.I. DuPont*, 66 TC 761, Dec. 33, 940, *aff'd per curiam*, CA-5, 78-2 USTC ¶9515, 574 F2d 1332.

²⁰ Oklahoma Statutes Title 60 §175.25(B)(1).

²¹ Uniform Trust Code §§814(a) and 504(d).

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